

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

THERESA J. WILLIAMS,

Civil Action File No.

Plaintiff,

v.

WALMART, INC.,
WAL-MART REAL ESTATE BUSINESS TRUST;
WAL-MART STORES EAST, LP;
ABC CORPORATION; XYZ CORPORATION;
JOHN DOE; AND JANE DOE,

Defendants.

_____/

NOTICE OF REMOVAL

COME NOW WAL-MART, INC., WAL-MART REAL ESTATE BUSINESS TRUST and WAL-MART STORES EAST, LP, named Defendants in the above-captioned matter, by and through their counsel of record, within the time prescribed by law, and file this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendants WAL-MART, INC. WAL-MART REAL ESTATE BUSINESS TRUST and WAL-MART STORES EAST, LP in the State Court of Forsyth County, Georgia, which is within the Gainesville Division of this Court. 28 U.S.C.A. § 90 (a)(2). Said lawsuit is styled as above and is numbered as Civil Action File No. 21SC-0758-A Plaintiff's claims against

Defendants include claims of negligence.

2.

Plaintiff filed the Complaint on or about May 12, 2021. Defendants WAL-MART, INC., WAL-MART REAL ESTATE BUSINESS TRUST and WAL-MART STORES EAST, LP received service of summons and a copy of the Complaint on May 19, 2021. Defendants WAL-MART, INC., WAL-MART REAL ESTATE BUSINESS TRUST and WAL-MART STORES EAST, LP file this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant Walmart, Inc. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant Walmart, Inc. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter. The principal place of business for Wal-Mart, Inc. is 708 SW 8th Street, Bentonville, AR 72716.

4.

Defendant WAL-MART STORES EAST, LP is a Delaware limited partnership, of which WSE Management, LLC is the only general partner, and WSE Investment, LLC is the only limited partner. The sole member of WSE Management, LLC and of WSE Investment, LLC is Wal-Mart Stores East, LLC, and the sole member of

Wal-Mart Stores East, LLC is Walmart Inc. Walmart Inc. is a Delaware corporation with its principal place of business in the State of Arkansas, and it was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of this lawsuit or at any time thereafter. The principal place of business for all entities mentioned in this paragraph is 708 SW 8th Street, Bentonville, AR 72716.

5.

Defendant Wal-Mart Real Estate Business Trust is a Delaware Business Trust with its principal place of business in the State of Arkansas. Defendant Wal-Mart Real Estate Business Trust was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter. The principal place of business for Wal-Mart Real Estate Business Trust is 702 SW 8th Street, Bentonville, AR 72716.

6.

Theresa J. Williams is a citizen of the State of Georgia.

7.

The citizenship of the fictitious ABC Corporation is disregarded for purposes of determining jurisdiction. 28 U.S.C. § 1441(a).

8.

The citizenship of the fictitious XYZ Corporation is disregarded for purposes

of determining jurisdiction. 28 U.S.C. § 1441(a).

9.

The citizenship of the fictitious John Doe is disregarded for purposes of determining jurisdiction. 28 U.S.C. § 1441(a).

10.

The citizenship of the fictitious Jane Doe is disregarded for purposes of determining jurisdiction. 28 U.S.C. § 1441(a).

11.

Complete diversity of citizenship exists between Plaintiff and Defendants.

12.

Plaintiff claims injuries to her head, ear, arm, wrist, buttock and legs, right shoulder, including a rotator cuff tear, post concussion headaches, olfactory auora, pain and suffering, past medical expenses in excess of \$30,511.85, future medical expenses and has made a \$500,000 settlement demand (Exhibit "A"), thereby meeting the jurisdictional requirement for federal subject matter jurisdiction. See Lowery v. Alabama Power Co., 483 F.3d 1184, 1262 n.62 (11th Cir. 2007) (quoting 28 U.S.C. § 1446(b)); Addo v. Globe Life & Accident Ins. Co., 230 F.3d 759, 761–62 (5th Cir.2000); Williams v. Safeco Ins. Co., 74 F.Supp.2d 925, 929 (W.D.Mo.1999); Southern Ins. Co. of Virginia v. Karrer, Civil Action No. 3:10–CV–84 (CAR), 2011 Westlaw 1100030

(M.D.Ga. Mar. 22, 2011); Golden Apple Management Co. v. Geac Computers, Inc., 990 F.Supp. 1364, 1368 (M.D.Ala. 1998); Jackson v. Select Portfolio Servicing, 651 F.Supp.2d 1279, 1281 (S.D.Ala. 2009); Barlow v. Variety Wholesalers, Civil Action No. 5:14-CV-375 (WLS) (M.D.Ga. Dec. 17, 2014); Devezin v. Wal-Mart Stores East, LP, Civil Action No. 1:134-CV-3721 (CAP) (N.D.Ga February 20, 2015); Peterman v. Wal-Mart Stores, Civil Action No. 1:13-cv-91 (WLS), 2013 Westlaw 5210188 (M.D.Ga. Sept. 13, 2013); Farley v. Variety Wholesalers, Civil Action No. 5:13-CV-52 (CAR), 2013 Westlaw 1748608 (M.D.Ga. April 23, 2013); Streicher v. Sam's East, Inc., Civil Action File No. CV419-01(WTM) (S.D. Ga March 4, 2019). The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

13.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiff and Defendants.

14.

Pursuant to the provisions of 28 U.S.C. § 1446, Defendants have attached as Exhibit "B" copies of all the pleadings that were provided to and served upon Defendants, including copies of all pleadings that have been filed to date in the State Court of Forsyth County, Georgia for the above-styled case.

15.

Pursuant to 28 U.S.C. § 1446, Defendants are not required to file a removal bond.

16.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

17.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Forsyth County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendants WAL-MART, INC., WAL-MART REAL ESTATE BUSINESS TRUST and WAL-MART STORES EAST, LP pray that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Gainesville Division.

McLAIN & MERRITT, P.C.

/s/ Howard M. Lessinger
Howard M. Lessinger
Georgia State Bar No. 447088

/s/ Mark L. Pickett
Mark L. Pickett
Georgia Bar No. 578190
Attorneys for Defendants
WAL-MART, INC.,
WAL-MART REAL ESTATE
BUSINESS TRUST, and
WAL-MART STORES EAST, LP

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326-3240
(404) 365-4514
(404) 364-3138 (Fax)
hlessinger@mmatllegal.com

The undersigned counsel certifies that the foregoing Notice of Removal has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Howard M. Lessinger
Howard M. Lessinger

CERTIFICATE OF SERVICE

This is to certify that on May 29, 2021, I electronically filed a **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

McLAIN & MERRITT, P.C.

_____/s/ Howard M. Lessinger
Howard M. Lessinger
Georgia State Bar No. 447088
Attorneys for Defendants
WAL-MART, INC.,
WAL-MART REAL
ESTATE BUSINESS TRUST and
WAL-MART STORES EAST, LP

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326-3240
(404) 365-4514
hlessinger@mmatllaw.com